

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: Squad #11	CCRB Case #: 201408586	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/14/2014 6:00 PM	Location of Incident: 325 East 106th Street	Precinct: 23	18 Mo. SOL 2/14/2016	EO SOL 2/14/2016	
Date/Time CV Reported Wed, 08/20/2014 4:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/20/2014 4:40 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Gaspar Sciacca	04264	931192	023 PCT
2. LT Washington Zurita	00000	918509	023 PCT
3. POM Jose Toribio	10268	932039	023 PCT
4. POM David Wheeler	16703	947606	023 PCT
5. POM Bryan Carney	26009	945555	023 PCT
6. POM Jonathan Virtuoso	27266	949774	023 PCT
7. POM Juan Hernandez	02484	949100	023 PCT
8. POM Norman Ortega	25560	947823	023 PCT
9. An officer			023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Julio Meyreles	22000	940470	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Hernandez	Abuse: PO Juan Hernandez stopped § 87(2)(b)	
B.POM Juan Hernandez	Abuse: PO Juan Hernandez searched § 87(2)(b)	
C.POM Juan Hernandez	Abuse: PO Juan Hernandez frisked § 87(2)(b)	
D.LT Washington Zurita	Abuse: Lt. Washington Zurita authorized the stop of § 87(2)(b)	
E.LT Washington Zurita	Abuse: Lt. Washington Zurita searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Jonathan Virtuoso	Abuse: PO Jonathan Virtuoso searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
G.POM Jose Toribio	Abuse: PO Jose Toribio searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.POM Norman Ortega	Abuse: PO Norman Ortega searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.POM David Wheeler	Abuse: PO David Wheeler frisked § 87(2)(b)	
J.POM David Wheeler	Abuse: PO David Wheeler searched § 87(2)(b)	
K.POM Jonathan Virtuoso	Abuse: PO Jonathan Virtuoso searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
L.LT Washington Zurita	Abuse: Lt. Washington Zurita authorized the search of § 87(2)(b)	
M. An officer	Abuse: An officer searched § 87(2)(b)	
N.SGT Gaspar Sciacca	Abuse: Sgt. Gaspar Sciacca interfered with § 87(2)(b)'s ability to record an incident.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 14, 2014, at approximately 6:00 pm, PO Jonathan Virtuoso and PO Juan Hernandez from the 23rd Precinct approached § 87(2)(b) and § 87(2)(b) near § 87(2)(b)'s green minivan in front of 325 East 106th Street in Manhattan and PO Hernandez allegedly reached his hands into each of § 87(2)(b)'s pockets and then frisked § 87(2)(b)'s thighs and groin (**Allegations A, B, and C**). Numerous other officers responded to the location and the highest ranking officer on scene, Lt. Washington Zurita, authorized the stop of § 87(2)(b) (**Allegation D**). Lt. Zurita, PO Jonathan Virtuoso, PO Jose Toribio, and PO Norman Ortega then searched the interior of § 87(2)(b)'s minivan (**Allegations E, F, G, and H**). While these officers started to search the minivan, PO David Wheeler frisked § 87(2)(b)'s pants pockets and then allegedly removed the contents of § 87(2)(b)'s pants pockets (**Allegations I and J**). § 87(2)(b) and § 87(2)(b) were moved to the rear of the minivan and PO Virtuoso allegedly placed his hands into § 87(2)(b)'s pants pockets and removed their contents (**Allegation K**). Lt. Zurita and an unidentified officer moved § 87(2)(b) to the rear of another parked vehicle, at which time the unidentified officer allegedly placed his hands into § 87(2)(b)'s pockets again and instructed § 87(2)(b) to open his mouth (**Allegations L and M**). The latter portion of the incident was recorded by a bystander, § 87(2)(b) (encl. B23-26), and soon after she started recording Sgt. Sciacca interfering with her filming (**Allegation N**). No contraband was found as a result of any of these frisks and searches, and § 87(2)(b) and § 87(2)(b) were released without being issued any summonses or being arrested (complaint encl. B1-3, CCRB statement encl. B5-18).

Mediation, Notice of Claim, and Criminal Histories

This complaint was ineligible for mediation. On May 12, 2015, a Notice of Claim inquiry was returned by the Comptroller's Office with positive results. § 87(2)(b) is, among other things, claiming false arrest and unlawful imprisonment and seeking 500,000 dollars as redress (encl. E1-5). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (encl. A10).
- This is the first CCRB complaint to involve § 87(2)(b) (encl. A11).
- This is the first CCRB complaint to involve § 87(2)(b) (encl. A12).
- Lt. Zurita has been a member of service for 18 years and there are two substantiated allegations against him. In CCRB case number 201114303, a stop and a frisk were closed by the board as substantiated and the NYPD disposition was instructions for the stop and no disciplinary action for the frisk (encl. A1-2).
- Sgt. Sciacca has been a member of service for 12 years and there is one substantiated allegation against him. In CCRB case number 201400888, a stop was closed by the board as substantiated and the board recommended formalized training; the NYPD disposition is still pending (encl. A3)
- PO Toribio has been a member of service for 12 years and there are no substantiated allegations against him (encl. A4).
- PO Ortega has been a member of service for six years and there are no substantiated allegations against him (encl. A5).

- PO Hernandez has been a member of service for four years and there are no substantiated allegations against him (encl. A6).
- PO Virtuoso has been a member of service for four years and there are no substantiated allegations against him (encl. A7).
- PO Wheeler has been a member of service for six years and there are no substantiated allegations against him (encl. A8).
- PO Carney has been a member of service for seven years and there are no substantiated allegations against him (encl. A9).

NYPD Documents

- According to the Roll Call and the Event, the following uniformed officers were on the scene: PO Virtuoso, PO Hernandez, PO Gary Cabral (a Hispanic male, 5'9" tall, 165 pounds) and PO Carlos Martinez (a Hispanic male, 5'9" tall 215 pounds). PO Virtuoso was the only white male (encl. D1-9, F1).
- According to MAS and 23rd Precinct requests, there were no Stop, Question, and Frisk Reports generated in relation to the incident (encl. G3-4, F1).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated that a uniformed Hispanic male with sleeve tattoos approached him first. Although § 87(2)(b) later pointed out PO Norman Ortega from the video as this officer, PO Ortega is primarily obscured in the video and he does not have sleeve tattoos. PO Juan Hernandez was the only officer with sleeve tattoos (PO Ortega has no tattoos) and was partnered with PO Virtuoso. Therefore, the investigation is crediting that the officer who stopped § 87(2)(b) allegedly searched him, and frisked him, was PO Hernandez, and Allegations A, B, and C are pleaded against him. § 87(2)(b) stated that when backup officers arrived, a vehicle search began. Among the group of backup officers was Lt. Washington Zurita, who was present for the vehicle search, at which point § 87(2)(b)'s freedom of movement was restricted. Therefore, Allegation D is pled against Lt. Zurita.

The video provided by § 87(2)(b) clearly shows that Lt. Zurita, PO Virtuoso, PO Toribio, and PO Ortega, all spent time at the trunk of the van searching through it. PO Virtuoso acknowledged searching the "lungeable, grabbable" area near the open passenger's side sliding door when he arrived on scene. Therefore, Allegations E through H have been pled against Lt. Zurita, PO Virtuoso, PO Jose Toribio, and PO Ortega,.

§ 87(2)(b) identified PO David Wheeler, who is clearly visible in the video and is seen wearing a baseball cap, from the video as the officer who frisked and searched him. PO Wheeler also matches the physical description provided by § 87(2)(b). Therefore, Allegations I and J are being pled against PO Wheeler.

§ 87(2)(b) described the officer who searched him a second time as a uniformed white male, 6'3" to 6'4" tall, 220 to 250 pounds, with short blond hair, and a "solid" build. The only uniformed white male officer on scene who matched that description was PO Virtuoso, who is 5'11" tall, 250 pounds, and has blond hair. All of the other uniformed officers on scene, PO Hernandez, PO Ortega, PO Martinez, PO Cabral, and PO Cintron (who was PO Ortega's partner and who did not appear on the Event) were all Hispanic males. PO Cintron is 6'0" tall and he has black hair and is 215 pounds (encl. F12). Because PO Virtuoso most closely matches the description of the male who allegedly searched § 87(2)(b) and otherwise appears on the video, Allegation K has been pled against PO Virtuoso.

§ 87(2)(b) alleged that his third search was instigated when a sergeant or lieutenant in plainclothes with a bald head brought him to the back of the vehicle. Lt. Zurita acknowledged

separating § 87(2)(b) from § 87(2)(b) for a short while in order to have a brief discussion with him and the video briefly revealed a moment in which Lt. Zurita was standing with § 87(2)(b) at the rear of another parked vehicle. Therefore, Allegation L has been pled against Lt. Zurita.

After Lt. Zurita moved § 87(2)(b) to the rear of this vehicle, an officer that § 87(2)(b) described only as a tall uniformed white male with brown hair and who was distinct from PO Virtuoso, searched § 87(2)(b) again. Another officer, distinct from this tall white male, instructed § 87(2)(b) to open his mouth and § 87(2)(b) complied. Because there was no documentation of another uniformed tall white male officer on scene and because § 87(2)(b) could not describe the officer who instructed him to open his mouth, Allegation M has been pled against “An officer,” from the 23rd Precinct.

Sgt. Sciacca identified himself in § 87(2)(b)'s video recording while he was standing in front of her. Therefore, Allegation N has been pled against Sgt. Sciacca.

Allegations Not Pleaded

On the video recording, § 87(2)(b) is told multiple times by the officers that her dog needs to be leashed and that it is a violation. § 87(2)(b) disputes this, and eventually asks, “You all gonna arrest me for that?” PO Hernandez says that she can be placed under arrest. Because § 87(2)(b) is in violation and continues to refuse to leash her dog, PO Hernandez’s statement here is considered an answer to her question about the eventuality that she could be arrested, not a threat that she would be arrested at that moment. § 87(2)(b) tells the officers where she lives during her conversations with them, as an onlooker. During her conversation with Sgt. Sciacca, he asked her if she lived there. When she asks why he wants to know, he says he’s just curious and having a conversation. Because this was part of a conversation she was having as an onlooker, and no police action was being taken with her prior to or after this conversation, even though she was admittedly in violation of New York City Rule 161.05 (encl. i) that dogs be restrained, no question is being pleaded regarding this interaction.

- **Allegation A) Abuse of Authority: PO Juan Hernandez stopped § 87(2)(b)**
- **Allegation C) Abuse of Authority: PO Juan Hernandez frisked § 87(2)(b)**
- **Allegation D) Abuse of Authority: Lt. Washington Zurita authorized the stop of § 87(2)(b)**
- **Allegation E) Abuse of Authority: Lt. Washington Zurita searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation F) Abuse of Authority: PO Jonathan Virtuoso searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation G) Abuse of Authority: PO Jose Toribio searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation H) Abuse of Authority: PO Norman Ortega searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.**
- **Allegation I) Abuse of Authority: PO David Wheeler frisked § 87(2)(b)**

Although the victims in this case were unaware, it is not in dispute that there was a 911 call that stated that there was a 6’0” white male wearing shorts and a Kangol hat in a green Dodge Caravan with Virginia plates in front of 325 East 106th Street who “pulled a gun” on the caller. This male was said to be accompanied by a second male. Call back attempts to the 911 caller proved unsuccessful and he was never identified (encl. F7). It is not in dispute that § 87(2)(b) who is a 6’0” tall white male, was wearing shorts and was inside of a green Dodge Caravan with Virginia plates in front of 325 East 106th Street with a second male, § 87(2)(b) when the police arrived.

§ 87(2)(b) stated that after he exited the minivan, PO Hernandez allegedly entered his pockets (encl. B12-18). During this search, PO Hernandez frisked his legs and groin. § 87(2)(b) stated that shortly after PO Virtuoso and PO Hernandez arrived at the scene, numerous plainclothes officers, including Lt. Zurita, appeared at the scene and began searching his vehicle (encl. B5-11). § 87(2)(b) corroborated that numerous officers searched the vehicle. § 87(2)(b) stated that after these officers arrived, § 87(2)(b) was frisked while he was at the rear of the van and § 87(2)(b) stated that PO Wheeler touched his pocket that held his phone and asked him what it was. § 87(2)(b) was told by § 87(2)(b) after the incident that § 87(2)(b) had been searched.

The video of the incident shows Lt. Zurita, PO Virtuoso, PO Toribio, and PO Ortega standing at the rear of the open trunk of the minivan, searching through its contents (encl. B23-26). The video does not reveal the frisks of either § 87(2)(b) or § 87(2)(b).

PO Hernandez stated that § 87(2)(b) and § 87(2)(b) were frisked, though he did not see these frisks. PO Hernandez assumed they were frisked because of the nature of the report (encl. C23-28). PO Wheeler stated that he was approximately a car-length away from § 87(2)(b) and § 87(2)(b) when they were frisked, although he could not recall who performed the frisks (encl. C40-44). PO Carney and PO Ortega stated that § 87(2)(b) and § 87(2)(b) were frisked, though neither of them knew who performed these frisks (encl. C17-22, C45-49). PO Virtuoso “suspected” that they were frisked based on the seriousness of the report (encl. C29-34).

The remainder of the interviewed officers either denied that § 87(2)(b) and § 87(2)(b) were frisked or they did not recall if they were frisked (encl. C1-39). Nevertheless, all of the officers interviewed either denied or did not recall performing the frisks themselves.

As for the vehicle search, PO Virtuoso acknowledged searching the “grabbable, lungeable,” area near the minivan’s rear passenger’s side door approximately two minutes after he arrived on the scene, and stated that at least one other officer did the same thing. PO Virtuoso explained that he did this because § 87(2)(b) and the minivan all matched the descriptions provided in the radio transmission reporting that there was a male in the minivan who had pulled a gun on someone, because § 87(2)(b) and § 87(2)(b) had been standing by the area that he searched when he approached, and because he had a general concern for other officers’ safety.

Lt. Zurita stated that when he arrived on the scene § 87(2)(b) told him that he did not have a gun and that the officers could search him and his van. Lt. Zurita stated that he believed that the vehicle was searched (though he did not recall where or by whom) before he was shown the video and then once he had seen the video it did not help him refresh his memory of where the van was searched or by whom (encl. C1-6). PO Toribio stated that the minivan was searched because § 87(2)(b) provided the officers with consent to search it (encl. C12-16). PO Ortega also stated that the trunk of the minivan was searched and that he “might” have searched through it, though he did not recall.

In People v. Argyris, DiSalvo, and Johnson, 24 N.Y.3d 1138 (2014), the court held that officers have reasonable suspicion to stop an individual on the basis of an anonymous 911 call, provided the information in the call is confirmed by officers’ observations upon arriving to the scene (encl. ii-xxiv). People v. Mack, 26 N.Y.2d 311 (1970) held that when an officer reasonably suspects a civilian has committed, is committing, or is about to commit a violent crime, this suspicion permits both a stop and a frisk of the civilian (encl. xxv-xxix). People v. Warren, 124 A.D.3d 699 (2015), the court held that an anonymous 911 call reporting a firearm inside of a vehicle provided adequate probable cause to search the vehicle without a warrant (encl. xxx-xxxi).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

- **Allegation B) Abuse of Authority: PO Juan Hernandez searched** § 87(2)(b)
 - **Allegation J) Abuse of Authority: PO David Wheeler searched** § 87(2)(b)
 - **Allegation K) Abuse of Authority: PO Jonathan Virtuoso searched** § 87(2)(b)
- § 87(2)(b) and § 87(2)(b) also both alleged that they were searched by officers at different points in the incident. § 87(2)(b) did not see § 87(2)(b) being searched (though § 87(2)(b) told him later that he had been). § 87(2)(b) stated that § 87(2)(b) was frisked and searched, but he did not provide any additional details regarding this search.

All of the officers interviewed did not recall or denied searching § 87(2)(b) and § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

- **Allegation L) Abuse of Authority: Lt. Washington Zurita authorized the search of** § 87(2)(b)
 - **Allegation M) Abuse of Authority: An officer searched** § 87(2)(b)
- § 87(2)(b) alleged that Lt. Zurita and two to three other officers escorted him to the rear of a vehicle that was parked behind § 87(2)(b)'s minivan. At the rear of this vehicle an unidentified officer placed his hands into his shirt pocket and two pants pockets and removed their contents. Another officer who accompanied him to the rear of this vehicle instructed § 87(2)(b) to open his mouth and § 87(2)(b) complied.
- § 87(2)(b)'s video very briefly recorded a moment at the rear of the vehicle parked behind § 87(2)(b)'s where § 87(2)(b) can be seen holding his hands above his head while Lt. Zurita was facing him. Another officer was present, though it is not clear from the video who it was because § 87(2)(b)'s body is blocking the officer; neither officer made contact with § 87(2)(b) at this time.

Lt. Zurita stated that § 87(2)(b) appeared nervous so he moved and separated him from § 87(2)(b) to have a brief conversation. Lt. Zurita placed his hand on § 87(2)(b)'s chest and told him to calm down, at which time § 87(2)(b) provided him an inmate card, which Lt. Zurita understood to mean that § 87(2)(b) had just gotten out of prison, which explained his nervousness. Lt. Zurita did not recall another officer searching § 87(2)(b) at this time.

§ 87(2)(b), § 87(2)(g)

- **Allegation N) Abuse of Authority: Sgt. Gaspar Sciacca interfered with § 87(2)(b) s ability to record an incident.**

It is not disputed that after § 87(2)(b) started recording the incident on her cell phone, Sgt. Sciacca approached her and started video recording her on his cell phone. Sgt. Sciacca explained that he filmed § 87(2)(b) because she was filming him and he wanted to get “the whole story.”

Patrol Guide Procedure 208-03 states that it is lawful for onlookers to videorecord police incidents (encl.xxxii-xli). The Finest Message from August 6, 2014 clarifies this (encl. xlii).

§ 87(2)(b), § 87(2)(g)

- § 87(2)(g), § 87(4-b)

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- § 87(4-b), § 87(2)(g)

Team: ____1____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
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Reviewer: _____
Title/Signature Print Date